

**SECTION 11. EMERGENCY OPERATING PERMITS – DEFENSE.**

- (A) For the purpose of a Class I or Class II operating permit, an “emergency” means any situation arising from sudden, unavoidable, and reasonably unforeseeable events beyond the control of the source, including acts of God, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (B) An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of paragraph (C) below are met.
- (C) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
  - (2) The permittee facility was at the time being properly operated;
  - (3) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
  - (4) The permittee submitted notice of the emergency to the Department within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (D) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (E) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Ref: Title 129, Chapter 11, Nebraska Department of Environmental Quality